

STATE OF MICHIGAN  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT, REFORM, AND ETHICS

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## TESTIMONY BY THE CITY OF GRAND RAPIDS

September 25, 2012

Thank you Mr. Chairman. My name is Elizabeth White, Deputy City Attorney for the City of Grand Rapids and I am here today to testify on HB 5879 and 5895.

The stated purpose of the Freedom of Information Act is to provide a mechanism whereby "the people shall be informed so that they may fully participate in the democratic process."<sup>1</sup> Likewise, transparency is a fundamental priority for the City of Grand Rapids, its City Commission, Mayor and City Manager. Since January 1, 2009, the Grand Rapids City Attorney's office and the Grand Rapids Police Department have responded to 4,168 FOIA requests, averaging more than 1,000 requests per year. Outside of the FOIA process, the GRPD has produced on demand more than 11,000 incident reports for the same period. Of the more than 4,000 FOIA requests processed by the City since the beginning of 2009, only three (3) denials have been appealed, and one (1) circuit court action has been filed. In the circuit court case, Summary Disposition was granted in favor of the City. In denying Plaintiff's demand for attorney fees, costs and damages, the judge determined that while a technical violation of the statute had occurred, "there was no indication that the City was purposely stalling or intended to deny the request."<sup>2</sup>

## FREEDOM OF INFORMATION REQUESTS PROCESSED BY THE CITY OF GRAND RAPIDS:

|                         | 2009       | 2010        | 2011        | 2012 to Date |
|-------------------------|------------|-------------|-------------|--------------|
| City Attorney's Office  | 225        | 234         | 315         | 239          |
| GRPD                    | 700        | 802         | 968         | 685          |
|                         |            |             |             |              |
| <b>TOTAL RESPONSES</b>  | <b>925</b> | <b>1036</b> | <b>1283</b> | <b>924</b>   |
|                         |            |             |             |              |
| GRPD, Reports on Demand | 2700       | 2850        | 3321        | 2480         |
|                         |            |             |             |              |
| Appeals Filed           | 1          | 1           | 1           | 0            |
| Lawsuits Filed          | 0          | 0           | 1           | 0            |
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<sup>1</sup> MCL 15.231(2).

<sup>2</sup> Harris v City of Grand Rapids, Kent County Circuit Court 11-05431-CZ (2011).

The City of Grand Rapids dedicates significant resources to its FOIA compliance efforts. In Grand Rapids, FOIA compliance requires the combined efforts of a municipal attorney, a legal secretary, and two command officers of the GRPD, all of whom respond to FOIA requests in addition to their regular full-time assignments. In addition, the GRPD dedicates two (2) full-time civilian clerical personnel of its Records Unit, both of whom are assigned to processing FOIA requests almost exclusively. This does not include the time spent by staff of all the City's various departments, who are routinely called upon by the individuals mentioned above to search their departmental records, and assemble perhaps thousands of pages of documents in response to a single FOIA request.

The City of Grand Rapids recognizes its obligations under the FOIA statute, and prides itself on its reputation as a fully transparent unit of local government. Indeed, the efforts of Grand Rapids were specifically recognized in testimony before this very committee last May. A member of the media, Mr. Todd Heywood of the *Michigan Messenger*, testified about what he described as "economic stonewalling" by one local law enforcement agency. Mr. Heywood, responding to a question posed by Chairman McMillin about such "stonewalling" stated: "When I'm dealing with the Mount Pleasant Police Department or the Grand Rapids Police Department, I don't have that problem."<sup>3</sup>

While we would not dispute the fact that the efficacy of the Michigan Freedom of Information Act could be improved by the thoughtful action of the Legislature, we do not believe that the amendment as presently drafted would accomplish that outcome. It is our opinion that the proposed amendment, while well-intended, would create consequences that have perhaps not been fully considered by this Committee. It is in the interest of bringing these concerns to your attention that we submit our testimony today.

**Limit on Cost of Duplication.** HB 5879 seeks to establish a limit on duplication charges of 10 cents per page. In fact, this charge is consistent with the standard duplication fee charged by the City of Grand Rapids, which is presently 12 cents per page for standard-sized documents. However, it does not appear that the authors of the amendment have considered the fact that documents in the possession of local governments often include plat maps, "as-built" drawings, plans and other documents that significantly exceed the size of the standard letter-sized sheet. While the documents sought under the FOIA tend to be contained in standard-sized documents, the City does receive a significant number of requests for large-format documents, and is presently able to recoup the additional cost of duplicating those documents. The proposed amendment would not allow for the recovery of those direct costs.

**Mandatory Requirement to Grant Requests for On-site Inspection.** The proposed amendment contained in HB 5879 mandates that a public body must permit on-site inspection of records, and may not charge a fee for copying those records. We submit for consideration the following example, as evidence of the difficulty this requirement would create. On July 19, 2012, the City of Grand Rapids received a FOIA request for any and all documents associated with a homicide investigation file, housed in the offices of the GRPD Vice Unit. The homicide investigation was closed, and the file was therefore subject to disclosure under the Act. However, the file contains the names of police officers, some of whom work undercover. In addition, the file includes the names of witnesses and confidential informants, some of whom continue to provide information that is critical to open and active GRPD

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<sup>3</sup> Michigan Information and Research Service (MIRS) Capitol Capsule, May, 2011

investigations. The City responded to the request, and agreed to release the file for review; but advised the requesting party that the entire file would have to be duplicated, in order to allow for the permitted redaction of information that would identify witnesses, informants and officers. As permitted by the FOIA, the City demanded a deposit in order to undertake the estimated 40-hour project of redacting the investigative records. Under the proposed amendment, there would not be any mechanism for the City to recoup the cost associated with the protection of its witnesses, informants and officers.

**Forfeiture of Costs for Records Produced More than Five Days After the Deadline.** HB 5879 proposes that a public body shall not charge a fee for a record produced more than 5 days after the deadline. There are situations however, when the sheer volume of records sought in a FOIA request prevents a public body from producing all the records requested within even the 15-day extended deadline. For instance, on July 7, 2011 the City of Grand Rapids experienced the murder of seven of our residents. This horrifying incident included a high speed chase, a hostage standoff, and ultimately the suicide of the suspect. The processing of this event by the GRPD required thousands of pages of police reports by more than 100 uniformed officers, hours of audio and video recordings, hundreds of photos, as well as witness statements and evidence collected at three different crime scenes. The City Attorney's Office and the GRPD were immediately inundated with FOIA requests from news agencies all over the country.

Even with several staff members devoted to the task on a full time basis for a period of weeks, the City was not able to compile, redact and release documents associated with this incident until the week of October 10, 2011. The press packet released by the GRPD included a complete timeline of events, as well as an edited compilation of audio and video. All documents were provided by the City at no cost. Rather than complaints about the delay in producing the records, Grand Rapids received praise for its handling of the matter. A news producer at a local news station sent the following email: "Thank you for your thorough processing and filling of the Dantzler FOIA's. You really did a superior job. Very impressive".<sup>4</sup>

Fortunately, FOIA requests associated with multiple homicides are a very rare occurrence. We are raising this issue however, because it demonstrates a very real instance where even the most diligent governmental units will find that meeting the 15-day extended deadline imposed under the FOIA is physically impossible. Rather than penalizing public bodies by preventing them from recouping the costs associated with assembling thousands of documents under a limited deadline, we would urge the Committee to consider an exception to the 15-day deadline, in cases where the sheer volume of documents sought under the FOIA creates a practical impossibility for the local governmental unit.

**Establishment of an Open Government Commission.** Companion House Bill 5895 proposes an Open Government Commission for the purpose of conducting appeals which are presently conducted by the "head of the public body", pursuant to Section 10 of the Act. The City of Grand Rapids has a long-standing Committee on FOIA Appeals, which is comprised of three (3) City Commissioners, and is convened upon the filing of an appeal of a denial of a FOIA request. As noted earlier, the Committee on Appeals has been convened three times since 2008. This is despite the fact that every denial of a FOIA request issued by the City includes a copy of Section 10 of the Act, which specifically describes the

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<sup>4</sup> Email from WOODTV8 News Producer Susan Samples, October 13, 2011

process for filing an appeal in the event of a dispute. We would therefore respectfully request careful consideration by this Committee of the need for this additional layer of administrative review, before imposing it on every municipality statewide, including the City of Grand Rapids.

In closing, the City of Grand Rapids would again like to remind the Committee of the City's continued commitment to transparency, as demonstrated by the level of resources it has continued to dedicate to the full, fair and timely sharing of public records under the Freedom of Information Act. We would welcome the opportunity to participate in an effort by the Legislature to improve the statute, and thereby perhaps improve the level of transparency for local governments statewide. We simply do not agree that the measures presently proposed will deliver that outcome. We also ask the Committee to consider the impact that the imposition of additional compliance costs on cities such as Grand Rapids would have on our continued effort to reduce our operating costs by ten percent (10%) by June 30, 2015.

Thank you for allowing us the opportunity to address the Committee on this important issue.